

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MIAMI COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

COREY F. SIMMONS

Defendant-Appellant

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Appellate Case No. 2018-CA-12

Trial Court Case No. 2017-CR-572

(Criminal Appeal from  
Common Pleas Court)

.....

**OPINION**

Rendered on the 9th day of November, 2018.

.....

PAUL M. WATKINS, Atty. Reg. No. 0090868, Assistant Prosecuting Attorney, Miami  
County Prosecutor's Office, 201 West Main Street, Troy, Ohio 45373  
Attorney for Plaintiff-Appellee

BYRON K. SHAW, Atty. Reg. No. 0073124, 4800 Belmont Place, Huber Heights, Ohio  
45424  
Attorney for Defendant-Appellant

.....

WELBAUM, P.J.

{¶ 1} Defendant-Appellant, Corey F. Simmons, appeals from his conviction for Theft, which resulted in a ten-month prison sentence. On June 22, 2018, Simmons's assigned counsel filed a brief under the authority of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), indicating there are no issues with arguable merit to present on appeal. Counsel did not raise any potential assignments of error.

{¶ 2} On July 2, 2018, the State filed a response, and said it would submit the case on the record. On July 5, 2018, we notified Simmons that his counsel found no meritorious claim for review and granted him 60 days to file a pro se brief assigning any errors. However, Simmons did not file a pro se brief. We also filed an order on July 5, 2018, requiring the trial court to file the presentence investigation ("PSI") report, the victim impact statement, if any, and any other documents the trial court reviewed in sentencing. The trial court complied with our order.

{¶ 3} After reviewing the entire record, including the PSI report, and conducting our independent *Anders* review, we find no issues with arguable merit for Simmons to advance on appeal. Accordingly, the judgment of the trial court will be affirmed.

## I. Facts and Course of Proceedings

{¶ 4} On December 4, 2018, an indictment was filed from the Miami County Grand Jury, alleging that Simmons had committed the crime of Theft in violation of R.C. 2913.02(A)(1), a felony of the fifth degree. On March 26, 2018, Simmons entered a plea of guilty to the charge in the Miami County Common Pleas Court.

{¶ 5} The trial court fully complied with the requirements of Crim.R.11(C)(2) for

accepting pleas. The court then accepted the guilty plea and ordered that a PSI be conducted.

{¶ 6} On May 8, 2018, the trial court proceeded to sentencing. After finding that Simmons had a prior felony record of convictions and a conviction for a misdemeanor of violence within the past two years, the court found that mandatory community control did not apply. The presentence investigation disclosed a very lengthy history of criminal convictions and poor supervision history, which the trial court recited on the record as it considered the appropriate sentence. After making specific findings under R.C. 2929.11, R.C. 2929.12, and 2929.13, the court sentenced Simmons to serve ten months in prison and to pay restitution to a stipulated amount. The court further granted Simmons a stipulated jail credit.

{¶ 7} After being sentenced, Simmons filed a timely notice of appeal.

## II. Discussion and Conclusion

{¶ 8} In an *Anders* review, we are required to decide “after a full examination of all the proceedings,” whether an appeal is “wholly frivolous.” *Anders*, 386 U.S. at 744, 87 S.Ct. 1396, 18 L.Ed.2d 493. See also *Penson v. Ohio*, 488 U.S. 75, 84-85, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988). Issues are not frivolous simply because the State “can be expected to present a strong argument in reply.” *State v. Pullen*, 2d Dist. Montgomery No. 19232, 2002-Ohio-6788, ¶ 4. Instead, an issue will lack arguable merit “if on the facts and law involved, no responsible contention can be made that it offers a basis for reversal.” *Id.*

{¶ 9} After conducting an independent review of the record pursuant to *Anders*, we

agree with Simmons's appellate counsel that, based on the facts and relevant law, there are no issues with arguable merit to present on appeal. Accordingly, the judgment of the trial court is affirmed.

.....

DONOVAN, J. and HALL, J., concur.

Copies sent to:

Paul M. Watkins  
Byron K. Shaw  
Corey F. Simmons  
Hon. Jeannine N. Pratt